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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,919	08/06/2003	Claudius Zeiler	5858-00800	8849
7590 02/23/2006			EXAMINER	
Conley Rose, P.C. P.O. Box 684908 Austin, TX 78768-4908			REIMERS, ANNETTE R	
			ART UNIT	PAPER NUMBER
			3733	
DATE MAILED: 02/23/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/635,919	Applicant(s) ZEILER ET AL.	
	Examiner Annette R. Reimers	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2005 and 12 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-22 is/are pending in the application.
- 4a) Of the above claim(s) 17-19, 21 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15, 16 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>09/29/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Election/Restrictions***

Applicant's election without traverse of Invention I, claims 15-22, and Species (Implant Plate), Figure 1A, and Subspecies (Fastening Member), Figures 2A-2C, in the reply filed on December 12, 2005 is acknowledged. Examiner further acknowledges that applicant believes that claims 15, 16 and 20-22 read on the elected Species (Implant Plate), Figure 1A, and Subspecies (Fastening Member), Figures 2A-2C. Examiner agrees with applicant regarding all claims except claims 21 and 22. The elected Species (Implant Plate), Figure 1A, does not have a blade, as required by claims 21 and 22. The blade feature is in the other Species (Implant Plate), i.e. Figures 3A, 5, 13, 14 and 15, which were not elected by the applicant. No claims appear to be generic, since Species (Implant Plate), Figures 13, 14 and 15, are each lacking at least one receiving member disposed at an outer edge or contour of a side of the head-end portion of the implant plate facing away from the bone.

Claims 17-19 and 21-22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species/Subspecies, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on December 12, 2005.

Claim Objections

Claims 16 and 20 are objected to because of the following informalities:

The language "has been" and "have been" of line 2, of claims 16 and 20, respectively, is unclear. For examination purposes, claim 16 has been interpreted to read, "wherein an outer edge of the aperture in the receiving member is at least one of blunted, rounded, and smoothed on entry and exit side", and claim 20 has been interpreted to read, "wherein all edges and rims intended to contact the flexible fastening member and human tissue are at least one of blunted, rounded, and smoothed". Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15, 16 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Sioufi (US Patent Number 5,409,489).

Sioufi discloses an implant plate, 73, for stabilizing a fracture of an upper-arm head or a fracture of a proximal upper arm, and formed to a flat longitudinal channel for bearing against a bone, comprising a head-end portion and a shaft-end portion, forming a spoon-shaped outer contour, holes for bone screws, 85, a raised receiving member, 88, for a flexible fastening member, such as a wire cerclage or a surgical suture material, disposed at an outer edge or contour of a side of the head-end portion of the

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implant plate facing away from the bone, wherein the receiving member has an aperture of circular enclosed inner diameter that surrounding a central axis extending substantially parallel to the outer edge or contour, and to the upper and lower side of the head-end portion of the implant plate, for threading, passing-through, and drawing together the flexible fastening member, and wherein the receiving member is provided with the aperture by being formed to be an eyelet perpendicular to an outer edge of the head-end portion and having a drill hole (see figures 8a and 8b). Furthermore, an outer edge of the aperture in the receiving member is blunted, rounded, and smoothed on entry and exit side, and all edges and rims intended to contact the flexible fastening member and human tissue are blunted, rounded, and smoothed (see figures 8a and 8b).

Response to Arguments

Applicant's arguments with respect to claims 15, 16 and 20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892 for art cited of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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EDUARDO O. ROBERT
SUPERVISORY PATENT EXAMINER